

AMENDED IN ASSEMBLY AUGUST 17, 2016

AMENDED IN SENATE AUGUST 9, 2016

Senate Joint Resolution

No. 26

Introduced by Senator De León

(Coauthor: Senator Leno)

(Coauthors: Assembly Members Bloom, Eduardo Garcia, Low,
Maienschein, and Mayes)

August 3, 2016

Senate Joint Resolution No. 26—Relative to blood donations.

LEGISLATIVE COUNSEL'S DIGEST

SJR 26, as amended, De León. Blood donations.

This measure would call upon the President of the United States to encourage the Secretary of the United States Department of Health and Human Services to adopt policies to repeal the current discriminatory donor suitability policies of the United States Food and Drug Administration (FDA) regarding blood donations by men who have had sex with another man and, instead, direct the FDA to develop science-based policies such as criteria based on risky behavior in lieu of sexual orientation.

Fiscal committee: no.

- 1 WHEREAS, Since 1983, the United States Food and Drug
2 Administration (FDA), an agency under the United States
3 Department of Health and Human Services (HHS), had prohibited
4 the donation of blood by any man who has had sex with another
5 man (MSM) at any time since 1977; and
6 WHEREAS, In December 2015, based on recommendations
7 from the HHS Advisory Committee on Blood and Tissue Safety

1 and Availability, the FDA promulgated revised regulations to allow
2 an MSM to donate blood only if he has not been sexually active
3 for the past 12 months. Despite these recent steps toward a policy
4 change, a double standard ~~would still exist~~ *still exists* under the
5 policy as it is ~~proposed to be~~ revised because it ~~would still treat~~
6 *still treats* gay and bisexual men differently from heterosexual
7 men; and

8 WHEREAS, California law prohibits discrimination against
9 individuals on the basis of actual or perceived sex, sexual
10 orientation, gender identity, and gender-related appearance and
11 behavior; and

12 WHEREAS, Argentina, Italy, Mexico, Poland, Portugal, Russia,
13 South Africa, South Korea, and Spain have adopted blood donor
14 policies that measure risk against a set of behaviors, sexual and
15 otherwise, rather than the sex of a person's sexual partner or
16 partners; and

17 WHEREAS, The FDA currently does not allow gay and bisexual
18 men in committed relationships to donate blood because, while
19 one partner may be monogamous, that individual cannot guarantee
20 that the other partner is monogamous. The FDA does not apply
21 this same logic to heterosexual relationships, which in effect
22 discriminates against gay and bisexual men; and

23 WHEREAS, The FDA is in the process of again reevaluating
24 and considering updating its blood donor deferral policies as new
25 scientific information becomes available, including the feasibility
26 of moving from the existing time-based deferrals related to risk
27 behaviors to alternate deferral options, such as the use of individual
28 risk assessments; and

29 WHEREAS, A 12-month deferral policy for gay and bisexual
30 men to donate blood is overly stringent given the scientific
31 evidence, advanced testing methods, and the safety and quality
32 control measures in place within the different FDA-qualified blood
33 donating centers; and

34 WHEREAS, The American Public Health Association has stated
35 that no specific scientific rationale is provided to justify the
36 12-month deferral policy. The technology can identify within 7 to
37 10 days with 99.9 percent accuracy whether or not a blood sample
38 is HIV-positive, and the chance of the blood test being inaccurate
39 within the 10-day window is about 1 in 2,000,000; and

1 WHEREAS, The General Social Survey conducted by NORC
2 at the University of Chicago estimates that 8.5 percent of men in
3 the United States have had at least one male sex partner since 18
4 years of age, 4.1 percent of men report at least one male sex partner
5 in the last 5 years, and 3.8 percent report a male sex partner in the
6 last 12 months; and

7 WHEREAS, An estimated 45.4 percent of men (54 million) in
8 the United States are eligible to donate blood, but only 8.7 percent
9 of eligible men actually do. There are 15.7 million donations of
10 blood per year made by 9.2 million donors, yielding approximately
11 1.7 donations per donor; and

12 WHEREAS, The Williams Institute of the University of
13 California at Los Angeles School of Law estimates that, based on
14 the population of eligible and likely donors among the MSM
15 community, lifting the federal lifetime deferral policy on blood
16 donation by an MSM would result in 4.2 million newly eligible
17 male donors, of which 360,600 would likely donate, generating
18 615,300 additional pints of blood. Applying national estimates to
19 the California population, the Institute further estimates that lifting
20 the ban on MSM blood donations would add an additional 510,000
21 eligible men to the current blood donor pool, of which 43,917
22 would likely donate, resulting in an additional 74,945 donated
23 pints in California; and

24 WHEREAS, One hundred fifteen members of the Congress of
25 the United States sent a letter to the FDA Commissioner, Dr.
26 Robert M. Califf, M.D., urging him to finally put an end to this
27 outdated blood donation policy and update it to reflect science,
28 not fear; now, therefore, be it

29 *Resolved by the Senate and the Assembly of the State of*
30 *California, jointly*, That the California State Legislature calls upon
31 the President of the United States to encourage the Secretary of
32 the United States Department of Health and Human Services to
33 adopt policies to repeal the current discriminatory donor suitability
34 policies of the United States Food and Drug Administration (FDA)
35 regarding blood donations by men who have had sex with another
36 man and, instead, direct the FDA to develop science-based policies
37 such as criteria based on risky behavior in lieu of sexual
38 orientation; and be it further

39 *Resolved*, That the Secretary of the Senate transmit copies of
40 this resolution to the President and Vice President of the United

1 States, to the Secretary of the United States Department of Health
2 and Human Services, to the Speaker of the House of
3 Representatives, to the Majority Leader of the Senate, and to each
4 Senator and Representative from California in the Congress of the
5 United States.

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